

Motion ALLOWED

This the 18th day of July, 2016.

/s/ Louise W. Flanagan

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Doris Mercer and Stephen Mercer)	Civil Action No.
)	5:15-CV-311-FL
Plaintiffs,)	
)	
)	
vs)	Motion To Voluntary
)	Dismiss Lawsuit With Out
)	Prejudice by Plaintiff
)	and Re-File This Lawsuit
)	In One Year
)	
WAL-MART STORES, INC.,)	
Defendants,)	
)	

Now comes the Plaintiff, Doris Mercer and Stephen Mercer, Requesting of the Court to grant our Motion to Voluntary Dismiss This Lawsuit without Prejudice, and leaving us with the option To re-file this lawsuit within one year, Pursuant to Federal Rule of Civil Procedure 41(a)(1)(2) or Federal Rule of Civil Procedure 41(2), stating that an action may be dismissed at Plaintiff's request only by the court order, on terms that the Court consider proper. Several weeks ago I made a telephone call To the Attorney for Defendant, Tyler Radtke. I talked to him As he had before suggested that I call him if I had any concerns Or questions that he could help me out with. I was not having The best day of my life, but held it emotionally together as I Explained to him the extreme difficulties' that we were dealing

With not only in the injuries I had and explained to him that I
Being scheduled for Oral/Maxillofacial Surgery at UNC Hospital
And reconstructive surgery for Trauma Dental Repair. Those were
Actually going to done in as many as 6 surgeries. My mouth and
Teeth were injured so badly due to the fall that I live in
Horrorific pain can't eat, have lost my taste buds, and ability
To smell. My doctor has to put me on antibiotics' way too often
Because my mouth stays seriously infected. My right arm has
Gotten worse, not at all better. I have two MRI's scheduled
At Wake Med in Cary next week. My shoulder, arm, wrist, hand
And fingers do not work properly anymore, and tests given by
My doctors showed that I have lost my ability to be able to
Grasp anything in my fingers, nor do I have any reflexes in my
Hand. I am right handed. I am a Published Author. I have lost
My abilities to earn a living and I am not able to write and
Finish two books I have had in the works. My doctor has had to
Change my pain medications to much stronger medications. I
can't

Stay awake and I have no control what's so ever.

As I fell backwards onto concrete with no way of knowing I was
Going to step into debris left on Wal-Mart's floor in their
Garden center, I had no control over my fall. I could not and
Did not stop the fall...I fell fast and hard onto my head, back,
Arms, legs, hip, neck, and spine. My body is a train wreck. I

Received so many injuries due to Wal-Mart's refusal to clean up
The remains of their employees breaking apart a crate leaving
Pieces of broken wood from the lid on the crate...sawdust that
Was used as packing in the crate...and packing tape that was
Wrapped around the patio chairs that were being removed by the
Employees of Wal-Mart. The manager of the employees knew they
Were unpacking that crate and he allowed them to leave at noon
On a Saturday on June 9, 2012 without checking to make certain
The employees did clean up from their job. They did not clean up
Anything and left the debris on the floor where all customers
Were allowed to traverse. Unfortunately there was no way to see
The debris coming from the middle aisle and turning right into
It as I did and turned right and within a few steps my feet went
Out from under me and I violently fell. One of my witnesses is
A store employee who told me and my friend that he had called
For help to clean up the debris three times as he was concerned
That someone was going to fall and be seriously hurt. No one
Ever came to clean up the debris. Not even the entire time that
I was there. This employee said to me and my friend that he
Sees this all the time. He said that Wal-Mart does not follow
Their own policy about safety and they do not care about their
Neither customers nor their own employees. It is with great
sadness and
Misfortune that I had to be seriously injured due to such a

Gross misconduct by the defendant, and their lack of concern
For me as a customer and human being as they showed no duty of
Care as even the law requires. Defendant is negligent in that

1. A dangerous condition caused my injuries.
2. The Defendant knew of the dangerous condition.
3. The Defendant failed to eliminate the dangerous condition
4. I didn't do anything to contribute to my own injuries
5. The dangerous condition was the direct and proximate
cause of my injuries
6. My injuries and subsequent damages are real

I have not been able to secure any attorney to represent me.
I am suffering with so many injuries to my body, including
Severe depression...the fear of leaving my home...I have lost my
Ability to dress myself put on makeup and fix my hair. As I
Can only use one arm taking a shower is one of the most
Difficult things I ever thought I would have to do. I have sever
Headaches and nose bleeds, and all I can do is lay in my bed
With my drapes closed. My back never stops hurting and the pain
Radiates into my buttocks, legs, hips, feet and ankles.
My life is not a good one anymore. It was before I walked into
Wal-Mart on June 9, 2012. I have not only lost my joy for living
But I have lost my companionship from my husband. He sleeps in
Another room...we have no social life...friends...we can't
boat...travel...
We don't even go out to eat. We have lost everything we owned,
And on June 27, 2016 we go to court as our mortgage company has
Foreclosed on our home. We have no money to move, we can't pack

Or lift or even hire someone to do it for us. We have nowhere To go. In February my daughter tried to kill herself. She is An alcoholic and wrecked my husband's car trying to kill herself.

Then again in March she attempted to kill herself again. She is Now as of a month ago in a recovery center. This has caused me Such an emotional time that I had a breakdown. I couldn't do Anything. I was sick and unable to focus...I just shut down. I stopped eating, even the soft foods and became a complete Worthless person and had no abilities to function as a normal Person would.

When I made the telephone call a few weeks ago to Defendants Attorney Tyler Radike, he seemed to have compassion for what All I had to deal with. He suggested to me that I file For a Voluntary Dismissal and refile my lawsuit in one year. He even gave me the Rule number being 41, and suggested that I Meet with a Lawyer to have this accomplished. I thanked him. The next day I called and got an appointment with a lawyer in Cary to discuss doing this. I told him that the Defendants Lawyer suggested it to me and gave the the Rule number 41. The Lawyer I saw was Dan Tittswell. He told me that I did Have the legal right to file for a Voluntary Dismissal and I Would be able to refile in one year. With everything going on In my life he felt this was the best choice for me at this time.

He suggested that since Tyler Radtke the lawyer for the Defendant had suggested that I do ahead and do a Voluntary Dismissal and refile in a year that it would be best to file A Stipulation Notice of a Voluntary Dismissal, which is under The Federal Rule of Civil Procedure (a)(1)(A)(ii)(B). This Would only require a Notice of Stipulation to the Court with All Attorneys who have appeared sign. I called Tyler Radtke Back on June 14, 2016 and told him that I had met with Attorney Dan Tittswell and he agreed with him that I needed to go ahead And file the Voluntary Dismissal without prejudice. When I told This to Mr. Radtke he acted nothing like the same person that Had suggested, even given me the Federal Rule 41, to take this Action. He told me that he did not tell me that he would agree With me filing this Motion and he would have to think about it For the rest of the week. I confronted him that he most Certainly did suggest that I take this action. He told me that He could not do that without the permission of Wal-Mart. I was Shocked and in dis-belief. I do not trust his intentions at this Time. He has cost me several weeks of working on this Action That he suggested I take, knowing that I have some Discovery Left to turn in my June 30, 2016. Not feeling safe or secure The Actions of Mr. Radtke is unethical and I will not wait for Him to get back to me. I have to look out for my best interest So I am requesting my Motion to Voluntary Dismiss this lawsuit

Leaving me with the option of re-filing it in one year, as the Federal Rules of Civil Procedure 41 grants me this right.

I do have sufficient cause and contributing factors to file this Motion. I did file a Motion for a Stay in which the judge Did agree that I had good cause for my request.

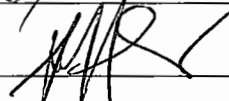
Wherefore... the plaintiffs pray to the Court to please accept

This Motion and grant me a Voluntary Dismissal without Prejudice.

Leaving me with the right to re-file this lawsuit in a year.

We will have an attorney that will represent us, I do not have The ability to act as though I am a Law firm with a full staff. I am one person and a lame one at that.

Doris Mercer  ProSe

Stephen J. Mercer  ProSe

This 17 Day June, of 2016

401 Pyracantha Drive
Holly Springs, NC 27540

919-987-4491

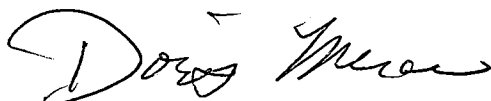
CERTIFICATE OF SERVICE

We hereby certify that the foregoing Motion To Voluntary Dismiss Lawsuit With Out Prejudice by Plaintiff and Re-File This Lawsuit in One Year, has been duly served on the Defendant by my depositing a copy of the same in the United States Post Mail, first class mail addressed to the Defendants as follows:

From
Stephen and Doris Mercer
401 Pyracantha Drive
Holly Springs, NC 27540

This the 17 day of June, 2016

To
Attorney Tyler Radtke
One Bank of America Plaza
421 Fayetteville Street Suite 1601
Raleigh, North Carolina 27601



Doris Mercer

Date June 17, 2016



Stephen J. Mercer

Date June 17, 2016